BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 554 19 89

Bill H _____ S 296 Original bill & history ____C

H. Committee on Labor & Employment Relations		S. Committee on Labor & Employment Relations	
Hearing Date(s) Mar 09	✓ C	Hearing Date(s) Feb 02	✓ C
_____	____C	Feb 04	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Mar 13	✓ C	Feb 06	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 274 INTRODUCED BY MEYER, ET AL.
REQUIRE LOCAL GOVERNMENT TO LEVY 1 MILL FOR ELDERLY ACTIVITIES

1/28	INTRODUCED		
1/28	REFERRED TO LOCAL GOVERNMENT		
1/30	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/07	HEARING		
	DIED IN COMMITTEE		

SB 275 INTRODUCED BY MEYER
ALLOW DEFICIENCY JUDGMENTS IN SOME TRUST INDENTURE FORECLOSURE ACTIONS

1/28	INTRODUCED		
1/28	REFERRED TO JUDICIARY		
1/30	REREFERRED TO BUSINESS & INDUSTRY		
2/14	HEARING		
	DIED IN COMMITTEE		

SB 276 INTRODUCED BY BLAYLOCK
ESTABLISH BOARD OF PERSONNEL APPEALS AS REVIEW BOARD FOR WAGE CLAIMS
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/28	INTRODUCED		
1/28	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/30	FISCAL NOTE REQUESTED		
2/02	HEARING		
2/03	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/07	COMMITTEE REPORT--BILL PASSED		
2/09	2ND READING PASSED	50	0
2/11	3RD READING PASSED	46	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/09	HEARING		
3/13	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	84	1
3/18	3RD READING CONCURRED	89	2
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS NOT CONCURRED	23	23
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/05	3RD READING AMENDMENTS CONCURRED	49	0
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 554 EFFECTIVE DATE: 7/01/89		

SB 277 INTRODUCED BY BOYLAN, ET AL.
TRANSFER LICENSING OF ELECTROLOGISTS TO BOARD OF MEDICAL EXAMINERS

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: Feb 2. 1989

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	✓		
SENATOR SAM HOFMAN	✓		
SENATOR J.D. LYNCH	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR BOB PIPINICH	✓		
SENATOR DENNIS NATHE	✓		
SENATOR RICHARD MANNING	✓		
SENATOR CHET BLAYLOCK	✓		
SENATOR GARY AKLESTAD	✓		

LABOR COMMITTEE

VISITORS' REGISTER

51st LEGISLATIVE SESSION

DATE: February 2, 1989

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

PRINT: NAME	REPRESENTING	Check One	
		Support	Oppose
Bob Jensen	Board of Personnel Appeals	X SB-276	
Mike Micone	DEPT. OF LABOR & INDUSTRY	X SB276 HB99	
Bill Palmer	Mont Coop HB 91	✓	
Mike Sennett		~~X~~	HB21 ~~HB21~~
CHARLES HUNTER	DEPT. OF LABOR & INDUSTRY	HB 99	
Evelyn Fenderson	Mt State Bldg Trades	SB 276	
JAMES W. BORCHARDT	STATE AUDITOR		
JAMES TUTWILER	MT CHAMBER COMMERCE	SB 276 HB 99	

It seems fair to employer and employee alike and for these reasons we recommend that the committee vote a do pass to SB 276.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

SIMPKINS: Question for Bob Jensen. Do you understand these amendments that were proposed and do you agree with these? One was to delete the word "commissioner" and say "department" on Line 14, Page 2.

JENSEN: We don't think these changes have any significant bearing on the bill.

SIMPKINS: In the definition it says the commissioner is the department, in a way, doesn't it? He is the head of the department.

JENSEN: The commissioner is the head of the department.

SIMPKINS: Why the recommendation to delete Section 5 in its entirety on page 4, starting at line 6 through line 14?

JENSEN: Section 5 was discussed when this bill went through the senate and there was a question about whether there should be continuing jurisdiction of the commissioner. This language is very similar in Section 5 to what we now have in the unemployment insurance law. There have been occasions when the commissioner has been asked to recall a case for some reason or other to make a correction in it. If Section 5 were deleted it wouldn't make that much difference because if we put the board in the process we hope those technical kinds of things could be corrected at the board level as well. I don't see it as that significant to the bill.

Closing by Sponsor:

SEN. BLAYLOCK: I close.

- - - - - - - - -

HEARING ON SB 202

Presentation and Opening Statement by Sponsor:

SEN THAYER: Before the session started I was contacted by the operator of the Showdown Ski Area and he told me about this

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: Feb 4, 1987

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	Y		
SENATOR SAM HOFMAN	Y		
SENATOR J.D. LYNCH	Y		
SENATOR GERRY DEVLIN	Y		
SENATOR BOB PIPINICH	Y		
SENATOR DENNIS NATHE	Y		
SENATOR RICHARD MANNING	Y		
SENATOR CHET BLAYLOCK	Y		
SENATOR GARY AKLESTAD	Y		

SENATE STANDING COMMITTEE REPORT

February 6, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration SB 276 (first reading copy -- white), respectfully report that SB 276 do pass.

DO PASS

Signed: _____

Gary C. Aklestad, Chairman

2/7/89

SCRSB276.206

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Senator Gary C. Aklestad, Chairman, on February 2, 1989, at 1:00 p.m., in Room 415 of the state Capitol.

ROLL CALL

Members Present: All members were present. Senator Tom Keating, Vice-chairman, Senator Sam Hofman, Senator J.D. Lynch, Senator Gerry Devlin, Senator Bob Pipinich, Senator Dennis Nathe, Senator Richard Manning, Senator Chet Blaylock, and Senator Gary C. Aklestad.

Members Excused: There were no members excused.

Members Absent: There were no members absent.

Staff Present: Tom Gomez, Legislative Council Analyst

Announcements/Discussion: There were no announcements or discussion.

HEARING ON SENATE BILL 276

Presentation and Opening Statement by Sponsor:

Senator Blaylock, Senate District 43, Laurel, MT, sponsor of SB 276, stated the bill is an act establishing the Board of Personnel Appeals as a review board for wage claims; revising wage claim procedures; including all prevailing wage cases under wage claim review procedures; amending sections 18-2-407, 39-3-201, and 39-3-212, MCA; and providing an effective date and an applicability date. The purpose of HB 276 is to create a administrative review procedure that will reduce litigation and allow better participation by lay persons in the resolution of wage claim disputes. The bill does not create a new board, but

utilizes the existing Board of Personnel Appeals. There is a slight fiscal impact, which has been tentatively approved by the

budget subcommittee.

List of Testifying Proponents and What Group they Represent:

Bob Jensen, Administrator of Labor and Relations Commission, administrator to the Court of Personnel Appeals, representing the Department of Labor and Industry.

James Tutwiler, representing the Montana Chamber of Commerce.

Testimony:

Bob Jensen, Administrator of Labor and Relations Commission, administrator to the court of Personnel Appeals, stated SB 276 primary effect is to create a new method of administrator review for wage and power complaints registered with the department. Under current law, a wage claim is filed with the department after investigation, and the failure of the parties to settle the matter after the insurer is first investigated. The case is referred to a hearings officer in the department. The hearings officer's decision becomes the final determination of the agency. The only avenue of appeal is to request initial review. Under the proposed law, a wage claim will continue to be referred to a hearings examiner. The hearing's examiner's decision will become final, only if the case is not appealed to the Board of Personnel Appeals. If the case is appealed, the board will review the matter and issue the findings. The board is being established as a review board The board will not hear evidence unless there is good cause shown. The board will review the hearing examiners' decision, will hear arguments by the parties, and will issue the recommendations. If the parties, under the new law, are dissatisfied with the board's decision, a judicial review can be requested in district courts.

Senate Bill 276 creates a procedure to hear appeals involving all collective bargaining matters, classification appeals for state government employees, grievances, unemployment insurance appeals, and others. The additional wage claim step is being proposed to provide additional due process for claimants and employers. Wage claims, on occasion, could involve a large amount of money. The department feels matters involving significant amounts should go though an appeal level hearing first before going to district court. An internal appeal level will also allow for technical error correction in the initial decision without district court interventions. Presently, if the hearing examiners issue a decision, and the problem is a technical error, someone must petition the district court to correct the error. Wage claim hearing, from the Montana Rules of Evidence, will also be exempt. The purpose is to reduce the process formality to allow better

lay person participation and reduce the need for attorneys to represent claimants and employers in the proceedings.

SB 276 simplifies the matter of telephone hearings, and SB 276 conforms with unemployment insurance procedures. The department conducts most wage claim hearings by telephone. SB 276 does not create a new board, but will use the existing Board of Personnel Appeals, a five member board appointed by the Governor. The Board meets one day per month and deals with collective bargaining matters, classification of appeals for state government employees, and grievances for employees in the Highway and Fish Wildlife and Parks division. The Highway and Fish Wildlife and Parks' employees have a special grievance procedure, which goes through the Board of Personnel Appeal. There is a slight fiscal impact: Three thousand dollars biennium year is requested to allow the current five members to remain in Helena one more day in order to hear wage claim cases. Therefore, the members will hear cases two days per month.

The Workers' Compensation Medication Program brings the legislation to the forefront. Currently, 67% of the cases are being resolved by the department concerning Workers' Compensation issues. The department believes people want to settle disputes at the lowest possible level. Some may argue that creating an additional step in the wage claim procedure may create a delay in the resolution of the claims. However, the department's experience shows the argument could be challenged. Currently, the petitions can be filed quickly, but because of backlog, it may be months before the case is heard and decisions issued. Mr. Jensen urged a DO PASS recommendation of SB 276

James Tutwiler, Montana Chamber of Commerce, stated the Montana Chamber supports SB 276. Any bill that expedites grievances without resorting to time and litigation costs is an advantage worth supporting.

LLLLof Testifying Opponents and What Group They Represent:

There were no testifying opponents.

Questions From Committee Members:

Senator Nathe questioned Mr. Jensen about savings. Mr. Jensen stated the savings will be savings on the part of the parties in efforts to litigate lower level cases.

Senator Blaylock asked if the 67% Workers' Compensation Cases coming before the Board of Personnel Appeal are solved. Mr. Jensen replied the 1987 reformed legislation set up the mediation process.

Sixty-seven percent of the Workers' Compensation cases are resolved in mediation without going to Workers' Compensation Court. Senate Bill 276 will help keep wage claimants out of court by utilizing the Board of Personnel Appeals. The procedure will provide one more chance to resolve the issue.

Senator Aklestad asked how many members are on the Board of Personnel Appeals. There are five members. The fiscal note involves $3,000. The additional $50 is for the second day per diem. The travel is already calculated in the budget. The members will meet two days each month.

Closing by Sponsor

Senator Blaylock urged support for SB 276.

HEARING ON HOUSE BILL 21

Presentation and Opening Statement Sponsor:

Representative Marks, House District 75, chief sponsor, stated HB 21 is an act to exempt employment of dependent members of an employers' family from the Worker's Compensation Act; amending section 39-71-401, MCA; and providing an effective date. HB 21 was requested by the Governor's Office. SB 21 takes care of the concern raised by the Supreme Court decision, Cottrill v. State Compensation Insurance Fund, 44 Rep. 1762 (1987). The Cottrill v. State Compensation Insurance Fund Case ruling determined the Legislature did not developed a decent rationale concerning the family members option exclusion. The ruling caused serious concern among family businesses. Agriculture, especially, is an industry that accepts working family members as part of the family farm operation. HB 21 responds to the court's decision and develops the rationale so the intentions can be maintained.

Representative Marks stated the division drafted a similar bill, but found the wordage acceptable in HB 21, therefore, opted to table Representative Smith's bill. The exception definition is the same definition the IRS uses. If the person is a family employee, and meets the IRS Dependency Rule definition, the family will qualify for an exemption, if the employer opts to do so. The people covered as family members will be sons, daughters, parents, aunts, uncles, nephews, and nieces. Representative Marks indicated the bill does not take care of cousins or grandparents. SB 21 is not as broad as hoped for. After discussing SB 21 with the Legislative Council Legal Staff, it was determined that the definition could pass another court test.

List of Testifying Proponents and What Group they Represent:

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 page 1 of 3
DATE Feb 2, 1989
BILL NO. SB276

DEPARTMENT OF LABOR AND INDUSTRY
EMPLOYMENT RELATIONS DIVISION
TED SCHWINDEN, GOVERNOR
STATE OF MONTANA
(406) 444-5600
P.O. BOX 1728
HELENA, MONTANA 59624

TESTIMONY ON SB-276
BY BOB JENSEN
ADMINISTRATOR - EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY

This bill's primary effect is to create a new system for administrative wage and hour claim review.

Under current law, a wage claim is filed with the Department. After investigation and the failure of the parties to settle the matter, the case is referred to a hearings officer who holds a hearing. The hearings officer's decision becomes the final determination of the agency and the only avenue of appeal is to seek judicial review in the District Court.

Under the proposed law, a wage claim would continue to be referred to a hearings cfficer. That officer's decision, however, would become final only if it was not appealed to the Board, the Board would only review the case and would not allow new evidence to be presented except in rare circumstances. If the parties were dissatisified with the Board's determination, the remedy would be a petition for judicial review to the District Court. Mr. Chairman, members of the committee, this is the same process we currently use for the resolution for appeals involving collective bargaining matters, classification appeals, grievances and unemployment insurance appeals.

EXHIBIT NO. 1 page 2 of 3
DATE Feb. 2, 1989
BILL NO. SB 27

The additional review step in the wage claim procedure serves several purposes. First it provides additional due process for claimants and employers. Wage claims can involve a large amount of money and matters of that importance should receive the heightened consideration of an appeal level hearing. An internal appeal level would also allow for the correcting of technical errors in the initial decision without the necessity of judicial intervention.

One of the major effects of the new process would be to reduce the number of judicial reviews filed on wage and hour matters. Once an appellate level review is established, the number of claims going further to judicial review should diminish.

Another effect of the legislation is to exempt wage claim hearings from the Montana Rules of Evidence. The purpose of this is to reduce the formality of the proceedings to allow better participation by lay persons and reduce the need for attorney representation. It also simplifies the matter of telephone hearings and conforms with unemployment insurance hearing procedure.

Mr. Chairman, members of the committee we are not creating a new board in this bill. Instead we are expanding jurisdiction of an existing board, the Board of Personnel Appeals to absorb this responsibility. The Board of Personnel Appeals, a five member Board appointed by the Governor, meets one day each month depending upon its workload. It currently hears appeals on collective bargaining matters, classification appeals for state

SENATE LABOR & EMPLOYMENT
EXHIBIT NO 1 page 3 of
DATE Feb 2, 1987
BILL NO SB 276

government employees, and grievances for employees in the Departments of Highways and Fish, Wildlife and Parks. There is a slight fiscal impact with this bill, $3000 each year of the biennium, to provide for a two day meeting each month for the Board of Personnel Appeals. This amount has been approved, at least tentatively, by our budget subcommittee.

One of the reasons we bring this bill forth at this time is because of our experience with the Workers' Compensation Mediation program. We are currently resolving about 67% of cases filed. This is an indication that parties to a dispute are willing to make a good faith effort to resolve their differences through an administrative procedure and before advancing to a litigation arena.

Some may argue that creating an additional step in the wage claim resolution procedure serves as a hindrance to speedy resolution. In our experience however this argument can be challenged. Granted petitions can be filed in District Court rather quickly under existing law. However it may be months before the matter is actually heard and a decision rendered. There is usually ample time for a Board review, especially since the Board meets monthly.

We would appreciate a do pass recommendation on this bill.

appropriate to determine adequate minimum child support amounts. If department determines the guidelines are no longer adequate, they shall amend them after considering the factors set forth in various statutes.

Amendments and Votes:

Senator Manning moved the statement of intent. The motion carried unanimously.

Recommendation and Vote:

Senator Manning moved DO PASS, AS AMENDED. The amendment is the statement of intent. The motion passed unanimously.

DISPOSITION OF SENATE BILL 276

Amendments and Votes:

Senator Blaylock made a DO PASS motion on SB 276.

The fiscal note is for $6,000. The amount is for an extra day. Currently, the money comes out of the General Fund. Jensen stated there are several programs that are paid for out of the Administrative Tax Fund. Senator Aklestad stated the employer has to pay for his own defense, plus the defense of the employee. Currently, the General Fund is picking up the expense, so Montanans do not have to fund the expense.

Senator Keating asked what the Board of Personnel Appeals reviews. Complaints between employee and employer, grievances, and strike action are reviewed. Senator Keating stated he put a repealer on SB 276.

Bob Jensen stated he deals with two board. The Board of Personnel Appeals handles all appeals on collective bargaining matters and hears grievance for Highways and Fish Wild Life and Parks. The other board is the Board of Labor Appeals, which deals with unemployment insurance matters.

Senator Devlin asked is there is a drastic overload of work for the board. Senator Blaylock stated the bill will give people a chance to come in and be heard by the Board of Personnel Appeals before going directly into mediation process. It will give people a chance to come before the Board of Personnel Appeals without a lawyer and be heard.

Bob Jensen stated the Board of Personnel Appeals currently meets approximately every other month. At one time, the board met every month. Senate Bill 276 allows one more due

process step.

Senator Keating asked if there is a limit on the claim size. Mr. Jensen said no. Wage claims vary from under one hundred dollars to multiple claims of thousands of dollar.

Senator Hofman asked what savings will be realized. Mr. Jensen stated the saving will be to the parties who do not have to go to court. The board can weed out approximately forty percent of the cases.

Senator Blaylock stated any group of people who have not been treated fairly, would want someone to collect for him/her. Senator Aklestad stated, as he reads the bill, the commissioner can maintain the action. Senator Blaylock asked if Senator Aklestad would object to that. Senator Aklestad stated he would not want to get into a situation that would depend on the commissioner to keep things alive and on the books, if the individual was not pursuing the action. There could be additional administrative costs and bureaucratic intervention. Senator Keating asked if the Commissioner of Labor could bring suit on behalf of unpaid workers. As of now, the person is responsible to bring action for himself/herself. Now the state is lining up against the contractor, under the prevailing wage section. So, the state is in the position of the unpaid worker, and is the champion against the employers. Senator Aklestad stated he does not want to be interpreted as trying to take the individual's latitude to be able to bring the action, they should be able to bring the action. The bureaucracy should not be involved in situations where the individual is not interested in the action being sought

Senator Blaylock stated he can not believe the Commissioner of Labor is going to take any action, unless people come, saying they were cheated. If a group of people have been cheated, then the Commissioner of Labor should be their champion. Senator Aklestad stated he did know if the state should put bureaucracy on one side or the other side. Tax dollars should not be taking sides.

Senator Keating stated he was excused to present a bill in another committee when SB 276 was presented. Does SB 276 review wage claims by the board, and do they take into account workers who have wage claims and want a hearing on the dispute. Under the review procedures, only the prevailing wage issue is concerned when the department of labor is bringing suit against the employer on behalf of the employee. The situation is divided, and we are giving the department power to bring a claim. It seems that we are dealing with two different sectors. The single topic is wage claims, but we are differentiating between wage claims

in the bill. Senator Keating asked if we are dealing with two different topic. Senator Blaylock stated a wage claim is a wage claim, and a prevailing wage claim is under Little Bacon Davis. If the employer is not paying the prevailing wage, the individual will have a cause to adjust the wage. If the individual is working a job where they have not been paid, the individual will have a cause.

Senator Hofman stated the bill may go further than what Senator Manning wants to do. If the laborers go to the commissioner and say they are being discriminated against, the commissioner of labor could help. If the commissioner of labor is going to go out and look for things to create problems, harassment could be an issue when dealing with contractors. Senator Blaylock stated he would resist taking the language out. Senator Hofman stated the individual or group has had recourse. The legislation is not taking recourse away. (Title 39, chapter 8, part 2)

Bob Jensen stated minimum wage and overtime are a lot clearer under the statute. These cases are investigated, and they go to district court hearing. The department wants the board in between the hearing and the court, when the claims concern prevailing wage and overtime. Currently, there is no provision for any hearing on the prevailing wage issue. The prevailing wage complaints usually concern whether he/she has not been paid the prevailing wage on a public work project. The bill is intended to handle the minimum wage issue and the prevailing wage issue in the same manner. The other kind of a prevailing wage question is when a contractor files a claim against another contractor, saying they are not paying their employees the prevailing wage. Put these issues into an administrative hearing. The bill does not address the contractor against contractor issue concerning a public works project.

Senator Nathe stated at the present time an employee, under the prevailing wage section, who feels a prevailing wage has not been paid, can go directly to district court. Mr. Jensen said the case must be investigated. The only recourse for the employer is to go into district court action. Senator Nathe stated the bill will allow for hearing determinations. Then, if the client is dissatisfied, they can go to court. Mr. Jensen said there should be an administrative hearing, and the board should deal with court action.

Senator Aklestad stated it appears the contractor against contractor should be addressed. The language states "all prevailing wage cases."

Senator Nathe asked, when the school district contracts out bus services to contracted bus services individuals, to what

extent is the school liable. I have often thought this situation is an existing time bomb waiting to explode because government-taxpayer's money is involved, and the school district contracts the bus services. If they are not being paid the prevailing wage, then the school district may be subjected to litigation. Mr. Jensen stated, under present law, the janitorial services, under the prevailing wage law, fall under the same category. However, there is a bill being drafted that will delete all janitorial services out of prevailing wage.

Recommendation and Vote:

The motion passed. Senator Aklestad stated he wants to be recorded as a NO vote.

DISPOSITION OF HOUSE BILL 21

Discussion:

Senator Blaylock stated this court case has gone to the Supreme Court. The Court said no, and the state was stuck. Senator Blaylock stated what bothers him is, if the family members get seriously hurt, what happens and who takes care of the injured worker. In some cases they go on welfare. The business is really going out on a limb if they do not have workers' compensation. Senator Nathe stated one of the things with workers' comp is: If the injured party sues, they sue the state. They don't sue the small business or the farmer. Senator Aklestad stated the bill pertains to immediate family members. Senator Keating said the bill reads: "a dependent member". Senator Nathe asked if workers' compensation is a guaranteed protection to the employer, so they will not be sued for injuries. The employer pays the premium, and the injured person can only sue the state. Senator Nathe stated he does not understand the court's rationale on the Crottrill decision. The boy was a family member, and he was twenty-two. Perhaps, this is the reason he was able to come back. Senator Nathe questioned why he didn't sue his father. Senator Manning stated there will be instances where the son or daughter will not be the least reluctant, if they get hurt, to sue dad. The father should be protected, as well as everyone else. Senator Nathe said he understands why there are restrictions, such as a dependent member restriction.

Recommendation and Vote:

Senator Hofman moved HB 21 BE CONCURRED IN. The motion carried. Senator Manning voted NO. Senator Hofman will carry the bill.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on March 9, 1989, at 3:15 p.m.

ROLL CALL

Members Present: Fifteen members.

Members Excused: One, Fred Thomas.

Members Absent: None.

Staff Present: Eddye McClure, Staff Attorney.

Announcements/Discussion: None.

HEARING ON SB 276

Presentation and Opening Statement by Sponsor:

SEN. BLAYLOCK: This bill is to provide an additional due process step on the handling of wage disputes. This would come after the hearings procedure. Now they must appeal right into district court. This would allow them a hearing before the Board of Personnel Appeals. Under the present system, any tiny error, such as a grammatical error or punctuation error, can only be cleaned up in district court. The bill would make procedure compatible with all other procedures, such as unemployment insurance, collective bargaining, classification appeals, employee grievances. This bill would bring us into compliance. It makes it possible for both claimant and employer to appear before the board without an attorney. I think we all like that idea. Rules of evidence are removed. They have an informal procedure under this and I would like you to give this bill your concurrence.

Testifying Proponents and Who They Represent:

BOB JENSEN, Administrator of the Employment Relations Division in the Department of Labor and Industry, and also Administrator to the five member Board of Personnel Appeals.

GENE FENDERSON, Montana State Building Construction Trade Unions.

JIM MURRY, Montana State AFL-CIO,

JAMES TUTWILER, Montana Chamber of Commerce.

Proponent Testimony:

BOB JENSEN, proponent. This bill's primary effect is to create a new system for administrative reviews of wage claims. Under current law a wage claim is filed with the department after investigation. In case of failure of the parties to settle the matter, the case is referred to a hearing examiner who conducts the hearing. The hearing officer's decision becomes the final determination of the agency. At that point the only avenue of review is to go into the district court on a judicial review case.

Under the proposed law of this bill, a wage claim would continue to be investigated and referred to a hearing officer. That officer's decision, however, would become final only if it was not appealed to the board. The board, if it was appealed to them, would review the matter and would not allow new evidence presented, except in rare circumstances. It would basically become a review board. If the parties were dissatisfied with the decision of the board, they could petition for judicial review.

This is the same process we now use in the Department of Labor and Industry for the handling of appeals involving all collective bargaining matters, classification appeals for state government employees, grievances and unemployment insurance appeals. The additional review step in the wage claim procedure serves several purposes. First, it provides additional due process for claimants and employers. Wage claims can involve quite a large amount of money at times and we feel that there should be one more element of review before they go into court. An internal appeal level would also allow for the correcting of technical errors that Sen. Blaylock mentioned in his opening.

One of the major effects of the new process would be to reduce the number of judicial reviews filed on wage and hour matters. Once an appellant review is established, the number of claims going further into the district courts should diminish.

Another effect of the legislation is to exempt wage claim hearings from the Montana Rules of Evidence. The purpose of this is to reduce the formality of the proceedings to allow better participation by lay persons and reduce the need for attorney representation.

You had a bill through this committee several weeks ago involving unemployment insurance tax appeals, removing the rules of evidence. This bill would do the same thing for wage and hour claims.

We are not creating a new board with this bill. Instead, we are expanding jurisdiction of en existing board, the Board of Personnel Appeals. This board is a five-member board

appointed by the governor which meets one day each month, usually, depending upon work load. It currently hears appeals on collective bargaining matters, classification appeals for state government employees, and grievances for employees in the Departments of Highways, Fish, Wildlife and Parks. There is a slight fiscal impact with this bill -- $3,000 each year of the biennium to provide for a two-day meeting of this board. Currently our budget has funds for them to come in for a one day meeting. If this bill passes, we need an additional $50 per diem for each of them for a second day meeting. This amount of money, the fiscal impact, has been tentatively approved by our budget subcommittee and the full house appropriations committee will probably deal with it this evening.

One of the reasons we bring this bill forth at this time is because of our experience with the workers' compensation mediation program. Because we are resolving about 67% of the cases in mediation, we feel that the parties are really willing to make an effort to resolve disputes at a lower level. We would appreciate a do pass recommendation for this bill.

GENE FENDERSON, proponent. We are here to support this legislation with two amendments because we believe overall the legislation being presented to you is very needed legislation to clarify the rights of employees in the state of Montana and the employers on wage claims. It also clarifies how the whole process works and makes it easier on both sides.

We believe there are two items in the bill that should be looked at. First, in Section Two, Line 14 where it says "commissioner determines," we prefer the language "the department determines." On Page 4, Section 5, I have talked to the sponsor and I have talked to the department and it is my understanding that the labor commissioner is in agreement with this also, that Section 5 could be deleted in its entirety. It is really not a necessary item and may put too much power in the commissioner. As you go through Sections 2, 3 and 4, the steps of how wage claims are going to be handled and the process are laid out. Then it gets down to Section 5 and the commissioner could actually turn around and change all those. We don't think that is necessarily good law.

With those two changes we would certainly encourage you to give a do pass to SB 276.

JIM MURRY, proponent. We support SB 276 with the amendments mentioned.

JAMES TUTWILER, proponent. We support SB 276. The bill promotes due process and informality. It should reduce litigation and attorney involvement; therefore, it should reduce cost.

situation here, Jerry, as we did with Francis Bardanouve's bill on taxation on the insurer's guarantee?

DRISCOLL: No, I checked that out very carefully. They don't pay premium tax in the first place, so there is no way they can take a deduction against premium taxes.

Closing by Sponsor:

SEN. THAYER: I just thank all of you for the good hearings you have given me on all these bills today and your courtesy.

- - - - - - - -

DISPOSITION OF SB 202

Motion:

Rep. Pavlovich moved that SB 202 be TABLED:

Vote:

Unanimous vote to TABLE SB 202.

- - - - - - - -

DISPOSITION OF SB 218

Motion:

Rep. Driscoll moved DO CONCUR in SB 218.

Vote:

Unanimous vote DO CONCUR in SB 218.

- - - - - - - -

DISPOSITION OF SB 276

Motion:

Rep. Whalen moved DO CONCUR in SB 276.

Amendments presented.

Discussion:

SIMPKINS: Question of Legal Counsel. Do we have a problem here as far as removing this section 5? By saying "continuing jurisdiction," we are expanding jurisdiction here and does this effect the bill in any way legally by allowing the department to maintain jurisdiction?

McCLURE: Since they already have jurisdiction, you are not creating anything that they didn't have before.

Vote:

Unanimous vote to PASS the amendments.

Motion:

Rep. Whalen moved DO CONCUR SB 276 AS AMENDED.

Vote:

Unanimous vote to DO CONCUR IN SB 276 AS AMENDED.

Rep. Driscoll will carry the bill in the House.

- - - - - - - - - - -

DISPOSITION OF SB 278

Motion:

Rep. Whalen moved DO CONCUR IN SB 278.

Vote:

Unanimous vote to DO CONCUR IN SB 278.

Rep. Smith will carry the bill in the House.

- - - - - - - - -

ADJOURNMENT

Adjournment At: 4:50 P.M.

Angela Russell
REP. ANGELA RUSSELL, Chairman

AR/MO
5509.MIN

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-9-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick,VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton	✓		
Rep. Jerry Driscoll	✓		
Rep. Bob Pavlovich	✓		
Rep. Bill Glaser			
Rep. Tom Kilpatrick	✓		
Rep. Thomas Lee	✓		
Rep. Mark O'Keefe			
Rep. Jim Rice	✓		
Rep. Richard Simpkins	✓		
Rep. Clyde Smith	✓		
Rep. Carolyn Squires	✓		
Rep. Fred Thomas			✓
Rep. Timothy Whalen	✓		

CS-30

VISITORS' REGISTER

HOUSE LABOR & EMPLOYMENT RELATIONS COMMITTEE

BILL NO. SB 276 DATE 3/9/89

SPONSOR Blaylock

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Bob Jensen	Dept. of Labor and Industry	X	
Evan Fenderson	MT State Bldg Trades	X	
~~[illegible]~~	~~[illegible]~~		
JIM TUTWILER	MT CHAMBER COM	X	
Jim Murry	Mont. State AFL-CIO	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

STANDING COMMITTEE REPORT

March 13, 1989

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 276 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Angela Russell, Chairman

[REP. DRISCOLL WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 14.
Strike: "commissioner"
Insert: "department"

2. Page 2, line 14 and line 15.
Strike: "he" in both instances
Insert: "it" in both instances

3. Page 4, lines 6 through 14.
Strike: section 5 in its entirety
Renumber: subsequent sections

4. Page 5, lines 15 and 18.
Following: "2"
Strike: ","
Insert: "and"
Following: "3"
Strike: ", and 5"